

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

ROORDA DAIRY, LLC
Facility ID #64981
Paullina, Iowa**ADMINISTRATIVE CONSENT ORDER**
NO. 2008-WW-36TO: **Brian Roorda, Owner**
Roorda Dairy, LLC
5128 460th Street
Paullina, Iowa 51046**Randall B. Kroese, Registered Agent**
Roorda Dairy, LLC
31 2nd Avenue NW
LeMars, Iowa 51031**I. SUMMARY**

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Roorda Dairy, LLC (Roorda Dairy) for the purpose of resolving waste water violations that resulted in a fish kill. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:Tom Roos, Field Office 3
Iowa Department of Natural Resources
1900 N. Grand; Gateway North, Suite E17
Spencer, Iowa 51301-2200
Phone: 712/262-4177**Relating to legal requirements:**Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Urbandale, Iowa 50322
Phone: 515/281-8563**Payment of penalty to:**Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034**II. JURISDICTION**

This administrative consent order is issued pursuant to the provisions of Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part I and the rules adopted or permits issued pursuant thereto and Iowa Code section 455B.109 and

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567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. Roorda Dairy is a 4,200 head dairy confinement facility constructed in 2007 and located at 5126 460th Street, Paulina, Iowa in O'Brien County. The cows are housed in a confinement freestall barn and milked in a confined parlor. All wastes, including silage pile runoff, are designed to be stored in earthen basins sized for 365 days of storage. All storm water at the site is drained through a collection ditch discharging to Mud Creek which runs along the north side of the facility.

2. On July 22, 2008, DNR Field Office 3 received a call concerning dead fish at the L-40 bridge where it crosses Mud Creek in O'Brien County. Tom Roos, Nathan Young, Bryon Whiting and Jeff Prier, DNR Field Office 3 environmental specialists, began the complaint investigation at the L-40 bridge. They observed 30-40 dead minnows and chubs. There were no live fish observed at this location. The water was clear and did not have an odor. The field tests indicated the following: Dissolved Oxygen - 7.0 mg/L, Temperature - 20° C, Ammonia - 0.8 mg/L, and pH - 8.0.

3. Mr. Young and Mr. Prier continued downstream while Mr. Whiting and Mr. Roos investigated upstream from the L-40 bridge. Mr. Young and Mr. Prier observed dead fish at the Pierce Avenue and 450th Street bridges downstream of the L-40 bridge. The field tests at the 450th Street bridge indicated the following: Dissolved Oxygen - 8.0 mg/L, Temperature - 19°C, Ammonia - 0.2 mg/L, and pH - 8.4. Laboratory samples were collected at the 450th Street bridge. The laboratory samples indicated the following: Ammonia Nitrogen (NH₃-N) - <0.05 mg/L, E. Coli - 860 Col/100 mL, biochemical oxygen demand (BOD) - <2 mg/L, and total suspended solids (TSS) - 6 mg/L. The extent of the fish kill appeared to only extend to the 450th Street bridge. Mr. Young and Mr. Prier conducted field tests further downstream at all the Mud Creek bridge crossings until its convergence with Mill Creek. At all locations downstream of the 450th Street bridge the water quality appeared to be normal and no dead fish were found.

4. Mr. Whiting and Mr. Roos continued upstream from the L-40 bridge to the location where Mud Creek crosses Olive Avenue. This bridge is the first bridge immediately downstream of Roorda Dairy. At this location, Mr. Whiting and Mr. Roos observed numerous dead minnows and chubs, as well one dead Green Sunfish. The water quality appeared normal with no odor. The field tests at this location indicated the following: Dissolved Oxygen - 10.0 mg/L, Temperature - 20° C, Ammonia - 0.4 mg/L, and pH - 8.2. Laboratory samples indicated the following: NH₃-N - <0.05 mg/L, E. Coli - 340 Col/100mL, BOD - <2 mg/L, and TSS - 5 mg/L. Mr. Whiting and Mr. Roos continued upstream to the Oak Hill Avenue bridge, which is located immediately upstream of Roorda Dairy. There were no dead fish and many live fish were observed. The field tests at this location indicated the following: Dissolved Oxygen - 11.0 mg/L, Temperature - 19° C, Ammonia - 0.3 mg/L, and pH - 8.1.

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5. DNR Field Office 3 staff then met at Roorda Dairy. They met with Brian and John Roorda. The group toured the facility and noted that the manure and parlor waste water was all being properly contained in the facility's basins. While looking at the silage pile area it appeared that the leachate ran off the concrete pad into a storm water ditch surrounding the facility. The concrete pad beneath the silage pile was designed to divert the leachate into the basin, but a pile of dirt had been placed in front of the path leading to the basin forcing the flow into the storm water ditch. There was no leachate flowing at the time of the visit, but a stained flow path was visible from the pad to the storm water ditch. It was determined that the storm water ditch ultimately discharges into Mud Creek several hundred yards north of where the silage pile runoff entered the ditch. There was no flow into the storm water ditch at the time of the visit; however there was a pool of liquid that appeared to be leachate that remained in the ditch near its convergence with Mud Creek. Field tests of the pool of liquid in the storm water ditch indicated the following: Dissolved Oxygen - <0.05 mg/L, Temperature - 20° C, Ammonia - 7.5 mg/L, and pH - 7.5. Laboratory samples were collected and the results indicated the following: $\text{NH}_3\text{-N}$ - 1.7 mg/L, E. Coli - 310,000 Col/100 mL, BOD - >650 mg/L, and TSS - 150 mg/L. Field tests were also collected in Mud Creek upstream from where the storm water ditch entered Mud Creek. The field tests indicated the following: Dissolved Oxygen - 6.5 mg/L, Temperature - 23° C, Ammonia - 0.6 mg/L, and pH - 8.1. The laboratory tests at this location indicated the following: $\text{NH}_3\text{-N}$ - <0.05 mg/L, E. Coli - 110 Col/100 mL, BOD - <2 mg/L, and TSS - 10 mg/L. The Roordas indicated that they were not aware of the dirt pile and would immediately remove the dirt pile.

6. DNR Fisheries Bureau determined that a total of 270 fish valued at \$68.73 were killed as a result of the silage runoff at the Roorda Dairy facility. Investigation costs were \$460.72. Total costs associated with the fish kill are estimated to be \$529.45.

7. On September 5, 2008, DNR Field Office 3 issued a Notice of Violation letter to Roorda Dairy for the violations that resulted in the fish kill in Mud Creek. The letter informed the facility that the matter was being referred for further enforcement.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.186 and 567 IAC 62.1(1) state that a pollutant shall not be disposed of by dumping, depositing, or discharging such pollutant into any water of the state except that this section shall not be construed to prohibit the discharge of adequately treated sewage, industrial waste, or other waste pursuant to a permit issued by the Director. During DNR Field Office 3's visit to the Roorda Dairy facility on July 22, 2008, it was evident that during past rainfall events that runoff from the silage pile had reached Mud Creek. The above-mentioned facts indicate a violation of these provisions.

2. 567 IAC 61.3(2) provides general water quality criteria and prohibits discharges that will produce objectionable color, odor or other aesthetically objectionable conditions; settle to form sludge deposits; interfere with livestock watering; or are toxic to

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animal or plant life. The discharge of leachate to Mud Creek was acutely toxic to fish and other aquatic life. The above-mentioned facts indicate a violation of this provision.

3. Iowa Code section 481A.151 provides that a person who is liable for polluting a water of this state in violation of state law shall also be liable to pay restitution to the DNR for injury caused to a wild animal by the pollution. The DNR has adopted 571 IAC chapter 113. 571 IAC 113 provides that a person who is liable for polluting a water of this state in violation of state law shall also be liable to pay restitution to the DNR for injury caused to a wild animal by the pollution. A fish kill resulted from the silage runoff at Roorda Dairy.

V. ORDER

THEREFORE, the DNR orders and Roorda Dairy agrees to do the following:

1. Roorda Dairy shall operate the facility and controls at all times in the manner they were designed to be operated;
2. Roorda Dairy shall pay restitution in the amount of \$529.45 within 30 days of the date the Director signs this administrative consent order; and
3. Roorda Dairy shall pay a penalty of \$4,000.00 within 30 days of the date the Director signs this administrative consent order.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for each of the violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Environmental Protection Commission (Commission) to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty of \$4,000.00. The administrative penalty is determined as follows:

Economic Benefit – Roorda Dairy saved time and money by not ensuring that the conveyance to the manure storage basin from the silage pile was clear. This could relate to less frequent pumping and land application. Based on the above considerations, \$500.00 is assessed for this factor.

Gravity of the Violation – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively

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at this time, as the most equitable and efficient means of resolving the matter. The runoff reached Mud Creek and led to a fish kill. Moreover, failure to properly maintain and manage the silage pile runoff threatens the integrity of the regulatory program. Based on the above considerations, \$2,000.00 is assessed for this factor.

Culpability -- Roorda Dairy has a duty to remain knowledgeable of the DNR's requirements and to be alert to the probability that its conduct is subject to DNR's rules. Roorda Dairy was designed by a professional engineer and part of the design was to direct silage pile runoff into an earthen manure storage basin. Based on the above considerations, \$1,500.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Roorda Dairy. For that reason Roorda Dairy waives its rights to appeal this administrative consent order or any part thereof.

VIII. NONCOMPLIANCE

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.

for Edmund J. Loring
RICHARD A. LEOPOLD, DIRECTOR
Iowa Department of Natural Resources

Dated this 30th day of
December, 2008.

by John Roorda
Roorda Dairy LLC
ROORDA DAIRY, LLC

Dated this _____ day of
_____, 2008.

Facility #64981; Kelli Book; Field Office 3; EPA; I.C.1 and I.C.6